



# California Corporate & Securities Law

## But Different Folk Have Different Views

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Yesterday, I pointed out several ambiguities in Corporations Code Section 701 and offered some alternative interpretations. Today, I heard from one reader who suggested some additional interpretations.

This reader suggests that “action” in Section 701(a) refers to the date on which the first request for consents is distributed or mailed to other shareholders. While the statute doesn’t exclude this interpretation, I don’t favor this reading.

Let’s start with the statute. Section 701(a) reads as follows:

*In order that the corporation may determine the shareholders entitled to notice of any meeting or to vote or entitled to receive payment of any dividend or other distribution or allotment of any rights or entitled to exercise any rights in respect of any other lawful action, the board may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days prior to the date of such meeting nor more than 60 days prior to any other action.*

In reading the statute, we see that it is attempting to cover a wide variety of actions. Some of these clearly involve a meeting (*i.e.*, the determination of shareholders entitled to notice of a meeting or to vote at a meeting). Others don’t involve a meeting (*i.e.*, the determination of shareholders entitled to receive a distribution, an allotment of rights, or to exercise any rights in respect of any other lawful action).

In my reading, the phrase “any other action” refers to those actions (*e.g.*, the payment of a dividend) that don’t involve a shareholders’ meeting. Under this interpretation, the record date with respect to a dividend may not be more than 60 days prior to the payment date. I feel in good company on this point because this is the view espoused in Marsh’s California Corporation Law § 14.18 (4th Ed.) (“Under Section 701 of the 1977 Law, the payment date for a dividend cannot be more than 60 days after the record dare [sic] . . .”).

This leaves the special problem of action by written consent. Although Section 701(a) doesn’t directly use the word “consent”, the statute applies to determinations of shareholders entitled to consent because “vote” is defined in Corporations Code Section 194 to include authorization by written consent. Because it seems reasonably clear to me that the “action” in the case of a dividend is the payment, consistency would seem

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to require that “action” in the case of consent refer to either the date of the consent action or the date of the action authorized by the consent. However, I admit that there are problems with either of these interpretations as well.

The reader also suggests a similar interpretation of the “day on which the first written consent is given”. The use of the passive voice (“given”) suggests to me that the statute is referring to the giving of the consent by a shareholder rather than the sending (active voice) of a request by a shareholder.

I do welcome comments and criticism. I don’t include a reply feature on the blog because this would require me to monitor and edit inappropriate or offensive responses. This reader’s response does illustrate my point that Section 701 is rife with ambiguity.

Today’s title comes from this [poem](#) by Rudyard Kipling that I’ve recited many times to my children and even my law students. The poem appears at the end of the *Elephant’s Story*. The poem is short and I strongly encourage you to read it to your children/grandchildren/spouse(s)/neighbors/friend(s) (if any)/law partner(s)/opposing counsel.

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